

or an organization, maybe with somewhat of a religious orientation or moral commitment, finds that behavior very repulsive. If such individual or organization did not want to hire such a person or continue their employment, they would find themselves subject to suit. If ENDA passes, the Federal Government will say: Wait a minute. You can't make any distinctions no matter what your religious beliefs are. You can't make any distinction on account of a person's sexual orientation.

"Bisexual" by definition means promiscuous, having relations with both male and female. We are going to give that a Federal preferred protected status under this legislation. I think that is a serious mistake. What about that school board in West Virginia? What about a school board in Montana? What about a school board making decisions like this in Alabama where maybe this small community says we do not think we should have avowed open homosexual leaders, gay activists, as teachers in the fifth grade?

Mr. President, I ask unanimous consent for an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. If they want to have that policy—right now they are able to choose to have such a policy. If this legislation became law, they could be sued. I think it is important to point that out. Do we want to give that kind of special status to behavior that many Americans find objectionable? Some people have said, "Well, it's immutable." I would debate that or question that. But many, many people feel, because of Biblical orientation, that it is immoral. Do we want to give that special protection and status to "sexual orientation" under the Civil Rights Act?

I met with a couple of black ministers who were very offended by the assessment of some that, well, this is just another special class that needs special status, such as race and gender. They are offended because they participated in civil rights demonstrations and they worked to bring about civil rights for minorities. They are very, very offended by this. So, Mr. President, I just make that comment. Plus, I want to make another comment in regard to the military.

The legislation exempts the military. I guess everybody applauds that. This Congress, 3 years ago, voted basically to repeal President Clinton's efforts to say that homosexuals should serve in the military. It was one of President Clinton's first efforts in this Congress. In a bipartisan fashion, we said we do not agree, and we changed the President's policy. He did not like it, but we changed it. And we came up with a policy, "don't ask, don't tell." Most of us basically were comfortable with that result and still are. That is the law of the land today.

It was not what President Clinton wanted. President Clinton wanted to

have gays serve in the military, but a lot of us thought, no, that is a mistake. Evidently, the promoters of the legislation agree this is a mistake because they do not try to change this policy in ENDA. They said, OK, we are going to have an exemption for the military. The military is a large Federal employer. We are going to exempt the military from this language.

Wait a minute. We have millions of private companies and employers in this country that we are going to say, wait a minute, for this big Federal employer, the Federal Government, we are going to exempt them from this policy of nondiscrimination based on sexual orientation. But for all other employers, no matter what your religious conscience tells you, no matter what your religious beliefs are, whether it is Christian or Jewish or Moslem—all of those basic religions have very strong tenets and statements that homosexuality is wrong and it is immoral—no matter what your religious belief is, no matter where you are coming from, too bad, that is an irrelevant decision concerning your employment practices.

When we are exempting the military and saying, oh, it does make a difference in the military—and we passed that; that is now the law of the land—but now we are going to say for all other employers, no matter what your convictions are throughout the country, you are not exempt. I think that is a serious mistake, a serious mistake.

Granted, nine States have some type of nondiscrimination based on sexual orientation laws, nine States. That means there are 41 States that do not. I guess a few of those States have done something by executive order. Senator KENNEDY is right, those executive orders can be changed, rescinded, or amended. But why in the world would we think we have to come in and have 41 States be overridden by the Federal Government? I think that would be a serious mistake.

So, Mr. President, I would just urge our colleagues to think about if school boards in some places, maybe, again, Alabama or West Virginia, really find promiscuous conduct unacceptable, and such persons engaging in such conduct not the right type of role models they would like to have for their young people they would be subject to suit under ENDA. Let us not leave them subjected to unbelievable lawsuits. Let us not have the Federal Government tell them that, no, they are not right. Let us not tell organizations such as the Boy Scouts or others that might have a policy that would be contrary to this legislation, let us not tell them they have to change it because we have decided we know better. I think that would be a serious mistake.

The reason why I mention this tonight is we will have 3 hours of debate on the defense of marriage bill tomorrow. But we only have 30 minutes on the legislation dealing with sexual orientation, elevating sexual orientation

to special status under the Civil Rights Act. I know my colleague from Massachusetts spoke on this earlier today. I felt like it was important to speak on it because tomorrow we only have 30 minutes, 15 minutes equally divided, for the biggest expansion to the Civil Rights Act since its inception, and in my opinion a serious, serious mistake. So I hope all of our colleagues will look at it very, very closely before they vote, and I hope that they will vote no tomorrow afternoon. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina, [Mr. HELMS], is recognized.

Mr. HELMS. I thank the Chair.

First of all, I commend the distinguished assistant majority leader, Mr. NICKLES. He has made some excellent points that have floated like a ship passing in the night by a lot of Senators. I hope Senators who did not hear him by way of television in their offices will have the Senator's remarks called to their attention by their assistants tomorrow morning.

#### THE DEFENSE OF MARRIAGE ACT

Mr. HELMS. Mr. President, during my years in the Senate I have been privileged on many occasions to work with a substantial number of ministers whose Washington churches today are referred to as "African-American."

These fine ministers have almost unanimously supported efforts by myself and Joe Gibbs and others to restore school prayer to the Nation's classrooms. They are, in the main, opposed to abortion. In fact, I do not recall even one of these ministers ever describing himself or herself as "pro-choice." But that perhaps is neither here nor there in terms of what I am here this evening to speak about.

The day before the Senate adjourned for the August recess, I ran into one of these fine ministers over in the Russell Building. His church is Baptist. He has a booming, cheerful voice. And when I heard that voice, I knew who it was. He was saying, "Are you going home tomorrow?" And I told him I thought I was since the Senate probably would recess for the month of August.

I asked him, Mr. President, if he had a message for the folks back home. And he said, "I sure do. Tell them that God created Adam and Eve—not Adam and Steve."

Some may chuckle at this good-natured minister's humor. But he meant exactly what he was saying. In fact, it was a sort of sermonette. The truth is, he was hitting the nail on the head, if you want to use that cliché, or telling it like it is. However one may choose to describe this minister's getting down to the nitty-gritty, it was no mere cliché, Mr. President. There could not have been, as a matter of fact, a better way to begin this debate in favor of the Defense of Marriage Act, which is H.R. 3396. The formal debate will begin tomorrow morning in this Chamber, the U.S. Senate.

Now then, let there be no mistake about it, this bill in no way, to any degree, is the kind of legislation which homosexual and lesbian leaders have disdainfully described as a, to use their words, "hate-driven bill."

In fact, it is precisely the critics of H.R. 3396 who are demanding that homosexuality be considered as just another lifestyle—these are the people who seek to force their agenda upon the vast majority of Americans who reject the homosexual lifestyle.

Indeed, Mr. President, the pending bill—the Defense of Marriage Act—will safeguard the sacred institutions of marriage and the family from those who seek to destroy them and who are willing to tear apart America's moral fabric in the process.

Isn't it disheartening, Mr. President, that Congress must clarify the traditional definition of marriage? But inch by inch, little by little, the homosexual lobby has chipped away at the moral stamina of some of America's courts and some legislators, in order to create the shaky ground that exists today that prompts this legislation being the subject of debate tomorrow morning in the U.S. Senate.

Just think, the prospect of a sovereign State's being compelled to recognize same-sex marriages sanctioned in another State is incredibly stark. If Hawaii's supreme court legalizes same-sex marriages in Hawaii, does the full faith and credit clause of the Constitution compel the other 49 States to recognize the new marriage law within their jurisdictions? I say no.

Such a suggestion, Mr. President, is a cockeyed interpretation of the Constitution; and this is one of so many times that I have wished the late, great Senator Sam J. Ervin, Jr., were here to cut it down to size. Homosexuals and lesbians boast that they are close to realizing their goal—legitimizing their behavior.

Mr. President, Bill Bennett has championed the cause of preserving America's culture; he contends that we are already reaping the consequences of the devaluation of marriage. And he warns that "it is exceedingly imprudent to conduct a radical, untested, and inherently flawed social experiment on an institution that is the keystone and the arch of civilization."

Bill Bennett is everlastingly right, and I believe the American people in the majority understand that the Defense of Marriage Act is vitally important. It will establish a simple, clear Federal definition of marriage as the legal union of one man and one woman, and it will exempt sovereign States from being compelled by a half-baked interpretation of the U.S. Constitution to recognize same-sex marriages wrongfully legalized in another State.

If the Senate, tomorrow, makes the mistake of approving the Employment Nondiscrimination Act proposed by the Senator from Massachusetts, it will pave the way for liberal judges to threaten the business policies of count-

less American employers, and, in the long run, put in question the legality of the Defense of Marriage Act. The homosexual lobby knows this and that is why there is such a clamor favoring adoption of the Kennedy bill.

Mr. President, at the heart of this debate is the moral and spiritual survival of this Nation. Alexis de Tocqueville said a century and a half ago that America had grown great because America was good. Mr. de Tocqueville also warned that if America made the mistake of ceasing to be good, America would cease to be great.

So, we must confront the question posed long ago: "Quo Vadis, America?"

The Senate is about to answer that question. We will decide whether goeth America. It is solely up to us.

#### EMPLOYMENT NONDISCRIMINATION ACT

Mr. KENNEDY. Mr. President, I addressed the Senate earlier today, but I just take a very few moments to respond to some of the points that have been made earlier by those who are opposed to the Employment Nondiscrimination Act.

First of all, on the question of disparate impact and disparate treatment of individuals, I want to make it clear again this evening, as we tried to make it clear earlier in the day—this is an issue that keeps coming up and I think it is important that we address—the Employment Nondiscrimination Act covers a showing of discrimination based on disparate treatment, not disparate impact. That means the person must do the following, first, prove that he or she is covered by ENDA.

Second, a person must show that he or she was qualified for the employment opportunity at issue and that the employer's adverse treatment was based on the person's sexual orientation.

Third, the employer must then present evidence to show that the adverse treatment was taken because of some legitimate nondiscriminatory reason, not sexual orientation, and then the individual making the claim bears the ultimate burden of proving that discrimination based on sexual orientation actually occurred.

Now, the Employment Nondiscrimination Act is not violated merely because an employment practice has a disparate impact on gay men and lesbian women. Therefore, statistics are not needed to enforce the Employment Nondiscrimination Act and employers are not required to ask whether an employee is gay. Despite this provision in the Employment Nondiscrimination Act, my colleagues are concerned that the Equal Employment Opportunity Commission will require employers to keep statistics regarding the sexual orientation of their employees.

The Employment Nondiscrimination Act grants the EEOC the same enforcement powers that it has under title

VII. This enforcement structure parallels the ADA—under which employers do not have to ask if an employee has a disability or keep statistics—and the EEOC says that it will undoubtedly enforce ENDA in the same way that it enforces the ADA. Therefore, there will not be any additional reporting requirements.

Finally, the EEOC says that because ENDA does not recognize a cause of action for disparate impact discrimination, there are no requirements pursuant to the Uniform Guidelines on Employee Selection. That has been an issue that has been brought up several times and raised again this evening. I hope I have responded to any of the concerns that people have on this issue, and I have included information from the EEOC in the record earlier today.

Second, Mr. President, this legislation is not a license for bizarre behavior—we heard that referenced earlier this evening. Like other civil rights laws, the Employment Nondiscrimination Act does not protect bizarre behavior. Employers can still enforce workplace rules as long as they apply them uniformly to heterosexuals and homosexuals. This legislation allows employers to discipline homosexuals and heterosexuals whose behavior is illegal or unsafe or that compromises their ability to perform their job—the examples given earlier this evening would clearly fall under those standards. These policies must simply be applied to all employees—heterosexual and homosexual.

For example, my colleagues expressed concern about dress conveying explicit sexual messages or that is otherwise inappropriate. There is no need for concern. An employer can enforce a dress code. It must simply apply to all employees. An employer may also enforce a code of conduct. School systems can discipline teachers who appear in pornographic movies or other kinds of activities, but they must discipline both homosexuals and heterosexuals similarly.

That is all we are looking for, similar treatment. Employers can establish codes of conduct. All they have to do is make sure that they apply to both groups.

I say to my colleagues who feel they do not understand this legislation, the Employment Nondiscrimination Act is not a license to illegal behavior. It is legislation that allows homosexuals and heterosexuals to work without being the subject of discrimination. Once again, the legislation simply says that employees, whether heterosexual or homosexual, must be treated fairly and equally.

Finally, there is some question about where all of this would lead. I think we can look to the nine States that have laws at the present time. They can be the best answers to many of the questions posed by those opposed to the bill. We know, that these laws are not, and they have not been problematic. I